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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 877

ANDREW NICHOLSON,

Petitioner,

v.

C. D. CALBECK, Deputy Commissioner, et al,

Respondents.

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, *AMICUS CURIAE* PETITION AND BRIEF IN FAVOR OF PETITIONER

American Trial Lawyers Association
Admiralty Section

By: Paul S. Edelman

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On Petition and Brief.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF THE AMERICAN TRIAL LAWYERS ASSOCIATION FOR LEAVE TO INTERVENE AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The American Trial Lawyers Association moves this Honorable Court for leave to file the attached brief as *amicus curiae* in support of the petition for a writ of certiorari in this case.

Consent has been sought from the parties herein. Consent to file an *amicus curiae* brief has been given by the attorneys for Mr. Nicholson and by the Honorable Erwin N. Griswold, Solicitor General on behalf of the United States Department of Justice representing C. D. Calbeck,

Deputy Commissioner. Counsel for respondents has refused consent. Accordingly, this motion is brought pursuant to Rule 42.

Members of the Admiralty Section of the Association include attorneys who represent the major number of injured longshoremen, maritime workers and crew members. In particular, these attorneys are directly concerned with the scope and effect of the Longshoremen's and Harbor Workers' Compensation Act in their day-to-day practice in relation to their injured clients.

Since this case represents but one of many situations where state benefits are but half the federal compensation benefits, and a basic question of statutory jurisdiction has been put in question, never determined explicitly by this Court, the Association feels constrained to petition this Court for leave to intervene as *amicus curiae*.

Respectfully submitted,

.....

PAUL S. EDELMAN
Counsel for The American
Trial Lawyers Association

IN THE

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v.

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Respondents.

AMICUS CURIAE PETITION AND BRIEF IN FAVOR OF PETITIONER

American Trial Lawyers Association
Admiralty Section

Statement of Interest of the *Amicus Curiae*

Paul S. Edelman, of Kreindler & Kreindler, New York, New York, a member of the bar in this Court, on behalf of the American Trial Lawyers Association, respectfully petitions this Court for leave to file a brief *Amicus Curiae* on behalf of petitioner herein, and if granted, for this Honorable Court to consider the arguments and cases in point following this Statement of Interest.

Consent to the filing of this brief has been given by the attorneys for the Petitioner and also by Hon. Erwin N. Griswold, Solicitor General, on behalf of the United States

Department of Justice, representing C. D. Calbeck, Deputy Commissioner. Attorneys for the respondents have not consented.

The American Trial Lawyers Association, is a national bar association, consisting of more than 20,000 lawyers, primarily engaged in the practice of personal injury law. The Admiralty Section of this Association consists of a substantial number of attorneys and proctors who specialize in maritime personal injury law. These attorneys represent members of the merchant marine and other maritime workers who are engaged in a hazardous industry and are recognized as having a special status both by legislation and generally in the courts of the land. All of these maritime workers have a real and direct interest in the outcome of this appeal.

Said Association is vitally concerned in the final outcome of this case involving as it does a situation which may finally resolve the tortuous series of cases which have attempted for over a generation to make a clear line by which attorneys and injured maritime workers will know their rights. It is a question of serious importance since 25% of all longshoremen's injuries occur on docks and piers, and in most states the average compensation is but half the federal rate.

A resolution of the issues in this case will materially affect not only the financial plight of injured maritime workers, but is of paramount importance to hundreds of thousands of workers, to the admiralty bar, and to the maritime industry generally. For the foregoing reasons it is respectfully prayed that this Honorable Court accept this brief *Amicus Curiae*.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

On behalf of Andrew Nicholson, the American Trial Lawyers Association prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered October 31, 1967.

Questions Presented

A longshoreman suffered an amputation by ship's equipment while the equipment was being moved on a dock. The dock was "upon, over or above navigable waters." Did

the Deputy Commissioner have jurisdiction to make an award for the injury pursuant to the Federal Longshoremen's Compensation Act?

Statement

Petitioner's leg was amputated while assisting in moving certain hatch beams of a vessel on a pier during the shifting of a vessel from one part of a pier to another. Petitioner was one of a longshoremen's gang preparing to load the vessel. For the sake of convenience, the hatch beams were removed from the vessel, and rather than being returned to the vessel were carried by a forklift to the ship's new location down the pier. The pier was on pilings and on concrete blocks over and above navigable waters. When the beams slid from the forklift they injured the petitioner.

The Deputy Commissioner and the courts below have rejected the claim of the petitioner because it occurred on a pier or dock even though the injury was caused by ship's equipment and the dock was over navigable water.

This Court is being called upon to settle the issue as to whether the Longshoremen's Act is applicable to accidents within Congressional power over admiralty and maritime accidents. In addition, this Court is being asked to decide whether the Longshoremen's Act and Congressional power is co-extensive with maritime contracts and interstate commerce powers thereby including an injury to a longshoreman by ship's equipment on a dock erected over navigable water.

It has been statistically demonstrated that about 25% of all injuries to maritime employees occur on docks and piers while ships are being loaded, unloaded, or repaired. Awards under the Federal Act are typically twice the amount given under most state acts.

The effect of the decision below is to withdraw a significant number of maritime accidents from the reach of federal concern.

I. The Longshoremen's Act Extends To The Limit Of The Admiralty Jurisdiction And Congressonal Power.

A review of the Supreme Court decisions since *Southern Pacific Co.* v. *Jensen* (1917), 244 U. S. 205 leads to the analysis that the Longshoremen's Act fulfills the Federal concern to the limit of Congressional power.

Jensen limited a state's power to the water's edge; a state compensation act was held inapplicable to an injury and death on a gangplank. However, *Jensen* (at p. 217) makes it clear that the Federal jurisdiction does not begin at the water's edge. The decision states without equivocation that there is Federal concern for any stevedoring activity; it involves a maritime contract of employment; by its very nature it is a maritime engagement; it affects "navigation between the states and with foreign countries . . .".

Thereafter commenced the series of cases to limit the rigidity of *Jensen* by establishing a rule of "local" concern to allow a state compensation act to apply to certain maritime injuries. But these cases were not limitations on Federal power which at the time was not exercised.

It was in this context that the Longshoremen's Act was debated and passed by Congress. Thereafter, the jurisdiction of admiralty was clarified by passage of the Extension in Admiralty Act; not to create new causes of action but to make American admiralty practice clearly in accord with the law of England and other foreign countries.

More recently, this Court has acknowledged in *Calbeck* v. *Travelers Insurance Co.* (1962), 370 U. S. 114 that in pass-

ing the Longshoremen's Act, "Congress intended to exercise to the fullest extent all the power and jurisdiction it had over the subject matter", and that ". . . Congress intended the compensation act to have a coverage coextensive with the limits of its authority".

Calbeck dealt with the application of the Federal Act to a welder engaged in "new" ship construction, as opposed to the suggested exclusive remedy of state compensation. The Court cited extensively language from *DeBardeleben Coal Corp.* v. *Henderson* (5th Cir. 1944), 142 F. 2d 481, at page 130 of 370 U. S.

The wide application of the rule that the Longshoremen's Act is co-extensive with federal maritime jurisdiction is underlined by *Boston Metals Co.* v. *O'Hearne,* D. C. Md. Adm. #4412, unreported opinion, June 20, 1963, aff'd (4th Cir. 1964) 329 F. 2d 504, cert. den. 379 U. S. 824. In that case a widow of a welder who was killed on a decommissioned hulk was held entitled to collect under the Act. The hulk was fast aground and in the process of being scrapped. District Judge Winter in the unreported opinion to this case stated:

> "I think the *Calbeck* case equates, I think the legislative history (of the Longshoremen's Act) supports, and I think the decisions in this Circuit also support the concept that *navigable waters* of the United States *means the admiralty jurisdiction of the United States, wherever it may be from time to time.*
>
> * * * I think that the *Calbeck* case makes perfectly plain that the application of the Longshoremen's and Harbor Workers' *Act was not* to be *frozen* to the *admiralty jurisdiction* of the United States as it then existed *in 1927* or as it was *considered then* to *exist,* but that rather there may be read into the Longshoremen's and Harbor Workers' Act a more flexible concept that under *subsequent legislation or,* as a result

of *subsequent court decisions,* the admiralty jurisdiction of the United States is being expanded and the application of the *Longshoremen's* and Harbor Workers' *Act expands along with it.*"

In *Holland* v. *Harrison Bros. Drydocks, etc.* (5th Cir. 1962), 306 F. 2d 369, 373, footnote 4 states that not only the locality is important but also "the nature of the work".

The footnote further states:

> "* * * The literal language of the Longshoremen's Act seems to concern only the locality of the accident, but the history of the Act indicates that its *underlying purpose* was to *embrace the admiralty jurisdiction whatever that might be.*" (Emphasis added.)

Once accepting this clear proposition, it is only necessary to establish how far "ashore" the admiralty jurisdiction extends.

By statute, the Admiralty Extension Act, 46 U.S.C., Sec. 740 (1948), provides:

> "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable waters, notwithstanding that such damage or injury be done or consummated on land."

The meaning of "caused by a vessel on navigable waters" has authoritatively been held to mean that even a dockside injury is covered by maritime law where the injury arose out of some "service to the ship".

The Supreme Court so held in *Gutierrez* v. *Waterman Steamship Co.,* 373 U. S. 206 (1963), and rejected the contention that the injury must be caused by the vessel or ship's appurtenances. In *Gutierrez,* a longshoreman was injured on a wharf when he slipped on beans that had spilled out of bags being unloaded from the vessel, and

the Court held that this dockside accident was within the maritime jurisdiction and subject to the doctrine of unseaworthiness.

Justice White, speaking for the Court made it clear that the impact on dockside was within the ambit of maritime jurisdiction because of the Extension of Admiralty Jurisdiction Act, and stated:

> "Respondent contends that it is not liable at least in admiralty, because the impact of its alleged lack of care or unseaworthiness was felt on the pier rather than aboard ship. Whatever validity this proposition may have had until 1948, the passage of the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C., Sec. 740, swept it away. * * *"

From *DeBardeleben* to *Calbeck* to *Gutierrez*, it is demonstrated that the Longshoremen's Act is co-extensive with admiralty jurisdiction, and that admiralty jurisdiction extends even to dockside where a worker is injured because of an activity related to a vessel and particularly when caused by direct contact with a vessel or its appurtenances.

This Court has never expressly held that a pier injury is cognizable under the Longshoremen's Act. The closest case—and one of the most brilliant decisions in the field—is *Michigan Mutual Liab. Co.* v. *Arrien*, 233 F. Supp. 496 (S.D.N.Y., 1964), aff'd (2d Cir. 1965) 344 F. 2d 640, cert. den. 382 U. S. 835. The facts of this case are of paramount importance because, in some quarters, they have been misconstrued.

> "At the time of the accident, he was working on a 'skid'—a removable platform approximately six by ten feet—which was attached to the dock. It extended out over the water and towards the ship some twenty to twenty-five feet below the deck, its outer edge short of the side of the vessel. The skid was

necessary because the stringpiece of the dock was too narrow. . . .

"The skid was attached to the pier by two overhead cables, extending from the superstructure of the pier to its offshore corners. The onshore side of the skid was secured to the stringpiece of the dock by three angle irons affixed to the stringpiece." (497)

The skid extended the working surface of the pier. In no sense was it a gangway or gangplank. It did not enable passengers, longshoremen or other workmen to go back and forth between the pier and the ship. It was exclusively an extension of the pier, and not of the ship.

The jurist epitomized the basis for his upholding an award under the Act in favor of a longshoreman injured while working on the skid in this one pregnant sentence:

"It thus appears that 'upon the navigable waters' is to be equated with 'admiralty jurisdiction.' " (501)

In commenting on the Admiralty Extension Act, he observed, 502:

"The basis upon which the Extension Act and the Longshoremen's Act rest is the same—the admiralty jurisdiction of the United States; and both Acts must be understood to have expanded pari passu with it. Any departure from this view would compel the conclusion that the Longshoremen's Act was to be frozen to the admiralty jurisdiction of the United States as it was understood at the time of its enactment in 1927, a view rejected by the Supreme Court in the *Calbeck* case by clear implication."

Another case underscoring the expansive influence of the Admiralty Extension Act upon not only traditional Admiralty concepts but also on the Longshoremen's and Harbor Workers' Act is *Interlake Steamship* v. *Nielsen*,

338 F. 2d 879 (6th Cir., 1965), cert. den. 381 U. S. 934. A shipkeeper drove his car off the end of the dock where his vessel was berthed and died of a fractured skull sustained on impact with the frozen waters of Lake Erie. The widow was granted an award by the Deputy Commissioner but had it taken away by the District Court. The Court of Appeals reversed and reinstated the benefits.

Judge Edwards wrote:

> "While the Admiralty Extension Act of 1948 obviously was not designed directly to affect the Longshoremen's and Harbor Workers' Compensation Act, it did serve to make clear that admiralty jurisdiction could extend to damage caused on land by maritime events, although early case law had held to the contrary. (See *Cleveland Terminal & Valley R.R. Co.* v. *Cleveland Steamship Co.*, 208 U. S. 316 (1908); *State Industrial Commission of New York* v. *Nordenholt Corp.*, 259 U. S. 263 (1922))" (882), and also:
>
> "It seems obvious to us that the trend of case law, the impact of the Admiralty Extension Act, and the effect of *Calbeck* have all pointed in the direction of expanding the boundaries of admiralty jurisdiction toward land." (882)

Very soon after its enactment, the Admiralty Extension Act was considered to be a clarification of jurisdiction which had always existed, although not always exercised.

Strika v. *Netherlands Ministry*, 185 F. 2d 555, 558 (2d Cir., 1950), cert. den. 341 U. S. 904.

The Act was even applied retroactively. *U. S.* v. *Matson Nav. Co.*, 201 F. 2d 610, 614 (9th Cir., 1953) (property damage to a federally owned dike).

The reasoning above has allowed recovery for seamen ashore when injured in the service of the ship under the Jones Act.

In *O'Connell* v. *Great Lakes Dredge and Dock Co.* (1943), 318 U. S. 36, a seaman was injured on land during the repair on a gasket connection to a land pipe used in discharging a ship's cargo.

A handyman who assisted in navigation of a dredge was injured in a shed on shore due to an explosion in a coal stove while he was placing lamps from the dredge in the shed. Recovery was sanctioned under the Jones Act in *Senko* v. *LaCrosse Dredging Corp.* (1927), 352 U. S. 370.

The most far-reaching case is, of course, *Hopson* v. *Texaco, Inc.* (1966), 15 L. Ed. 2d 740. In that case two ill seamen in a foreign port were being taken to the United States consul in a taxi cab procured by the ship's master. The cab driver was in a collision, through his negligence. One seaman was killed and one was injured. The taxi service was held to be an "agent" of the shipowner, and recoveries were allowed against the shipowner under the Jones Act.

The same grant of power to Congress by the Constitution delimits the reach of the Jones Act and the Longshoremen's Act. Where an injury occurs because of a vessel-connected activity the scope of both these federal statutes extends and grants a remedy.

Since the Supreme Court has seen fit to allow damage actions under maritime law for dock injuries, there is no impediment for the application of the Longshoremen's Act to the same injuries.

The so-called dry-dock cases reenforce the admiralty jurisdiction over land areas involving maritime pursuits; the federal Act has been applied universally.

Maritime workers injured on a "drydock" are specifically covered by the Longshoremen's Act as well as those who work at least in part upon navigable waters.

33 U.S.C., Sec. 902(4); 903(a).

A "drydock" included a marine railway whereby a vessel is drawn from the water onto land.

Avondale Marine Ways, Inc. v. *Henderson* (1953), 346 U. S. 366.

To make this meaningful, the land adjacent to a marine railway is within the geographical and functional scope of the Longshoremen's Act. This has been the consistent view of the Court of Appeals.

Holland v. *Harrison Bros. Drydock etc.* (5th Cir. 1962), 306 F. 2d 369, 372, and *Maryland Casualty Co.* v. *Lawson* (5th Cir. 1939), 101 F. 2d 732, 733, cited with approval in the *Avondale Marine Ways* case.

A "building way" injury has also been held covered by the Longshoremen's Act. A building way is on land and used for new ship construction, but the outermost end extends into the water for the launching of a completed vessel. The "building way" was held to be sufficiently within the term "dry dock" to allow recovery for a workman under the Longshoremen's Act in *Port Houston Ironworks Inc.* v. *Calbeck* (S. D. Tex., 1964), 227 F. Supp. 966.

A dock or pier is demonstrably within the admiralty jurisdiction when a maritime worker is injured by ship's equipment. This is a reasonable and common-sense approach.

> "A wharf is a structure on the margin of navigable waters, alongside of which vessels can be brought for the sake of being conveniently loaded or unloaded. Hence waters of sufficient depth to float vessels is an essential part of every wharf. *A wharf cannot be defined or conceived except in connection with adjacent navigable waters.*" (Emphasis supplied.)
>
> *Langdon* v. *City of New York* (1883), 93 N. Y. 129, 151.

Compensation acts in general, and the Longshoremen's Act in particular are to be liberally construed in favor of coverage.

Many decisions involving the Longshoremen's Act discuss this principle of statutory construction. *Reed* v. *The Yaka* (1963), 373 U. S. 410, restates this proposition:

> "We have previously said that the Longshoremen's Act must be liberally construed in the conformance with its purpose, and in a way which avoids harsh and incongruous results."

Accord:

Voris v. *Eikel* (1953), 346 U. S. 328.

In addition, we have the long and still vital history of the "Twilight Zone" cases before us. Ever since 1942 in *Davis* v. *Department of Labor and Industries,* 317 U. S. 249, the Supreme Court has held that wherever there is doubt in applying state as opposed to federal compensation acts in maritime situations, the *tribunal chosen by the claimant* has a presumption of valid jurisdiction. *Davis* states:

> "... the line separating the scope of the two being undefined and undefinable with exact precision, marginal employment may, by reason of particular facts, fall on either side."

Davis has been interpreted as "... a revolutionary decision deemed necessary to escape an intolerable situation and as designated to include within a wide circle of doubt all water front cases involving aspects pertaining both to the land and to the sea where a reasonable argument can be made either way ..."

Moores' case (Sup. Mass., 1948), 323 Mass. 162, 167, 80 N. E. 2d 478, 480, aff'd (1948) 335 U. S. 874, *sub nom. Bethlehem Steel Co.* v. *Moores.*

The *Calbeck* case (1962), 370 U. S. 114, still makes clear that in any doubtful area the claimant may elect his remedy, and that the Twilight Zone rule still holds.

Respondents would undo all the practical solutions brought forward by the *Davis* case, and applied since 1942.

II. The Longshoremen's Act Applies To Maritime Contracts Of Employment On Man-Made Structures On Or Above Navigable Waters.

Admiralty jurisdiction extends to all damage or injury occurring during the performance of a maritime contract, including contracts of ship, loading and unloading and repair, even though the injury involves piers and wharves over navigable waters.

As indicated in Point I, it is the contractual maritime jurisdiction which allows Jones Act recovery for crew members injured ashore through the negligence of their employer or agents of the employer.

The Longshoremen's Act is based on the New York Workmen's Compensation Act. Because the New York Act regulates the employment contract, it even applies to employees injured in other states so long as New York has an interest in the employment contract.

Baduski v. *S. Gumpert Co., Inc.*, 277 App. Div. 591, 102 N.Y.S. 2d 297, App. dism. 302 N. Y. 702.

Cases in Point I demonstrate the applicability of land-based injuries in conjunction with repair work on drydocks and adjacent land areas. These cases apply to the case at bar since a pier over water is even more "maritime" than land areas near marine railways. Application of the Longshoremen's Act is more apt for areas "over" water than land areas for which relief has been granted.

An accident on a pier or dock built above navigable water is "upon" navigable waters.

As demonstrated above, the Supreme Court has allowed recovery under maritime law for injuries caused by unseaworthy vessels and appurtenances where the impact is on a dock "not remote" from the offending cause (*Gutierrez*).

The federal interest in piers and docks is also shown by the fact that piers and wharves must be recommended and approved by federal authorities. Title 33, Section 403, makes it unlawful to build any "wharf, pier . . ." except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army. Section 406 establishes substantial fines (up to $2,500) and/or imprisonment for violations.

The section prohibits "any obstruction" which is not authorized, "to the navigable capacity of any of the waters of the United States . . .".

The national concern is with the effects of structures on navigable waters, and not only on the objects navigating in the waters.

A federal interest in navigable waters is not withdrawn by placing man-made structures on or over such waters.

United States v. *Appalachian Power Co.* (1940), 311 U. S. 377, 408, 409.

Economy L. & P. Co. v. *United States* (1921), 256 U. S. 113, 118, 124.

Impact on a dock or pier has been the basis for recovery under the federal Longshoremen's Act where the employee was thereafter propelled into the water.

Interlake S.S. Co. v. *Nielsen* (6th Cir. 1964), 338 F. 2d 879, cert. den. 381 U. S. 934.

Michigan Mutual Liability Co. v. *Arrien* (2d Cir. 1965), 344 F. 2d 640, cert. den. 382 U. S. 835 (injury on a "stage" of skids extending over the water).

The mere fact that the injured party subsequently went into the water should not be decisive of coverage of the Act where the initial injury was on the dock or pier; if the injury was in maritime employment when it occurred on the pier in these cases it should also be applicable to the case at bar.

If on the other hand an artificial distinction is made between what is "on" and what is "over" navigable water then airplane accidents would be excluded from coverage by the Death On The High Seas Act. But in all logic, such deaths including explosions in airplanes in flight and the like are covered by the Death On The High Seas Act.

D'Aleman v. *Pan American World Airways* (2d Cir. 1958), 259 F. 2d 493.

The word "upon" is susceptible of an interpretation which not only means "on" but "over" and "above". National policy has been established concerning structures which are "over" and "above". A remedial statute which has been construed to go to the limits of federal concern would by both purpose and common sense make the Longshoremen's Act applicable to the situation in this case.

This Court has never definitively decided that an injury on a man-made structure adjacent to ship loading activity is precluded from recovery under the federal Act. It is respectfully submitted that the legislative history of the Act sought this application; it is consistent with the jurisdiction of the Congress over such activities, and the Act presumes coverage of the Act in a borderline activity (Sec. 920).

The legislative history of the Act in 1926 and 1927 indicates that maritime coverage was the purpose of the Act, and that the Act was to be applied as far ashore as the maritime activity itself extended. If navigable waters are involved in a broad, common-sense definition, the employee has an election to come under the federal Act.

Calbeck v. *Travelers Ins. Co.* (1962), 370 U. S. 114. *Holland* v. *Harrison Bros. Dry Dock, etc.* (5th Cir. 1962), 306 F. 2d 369, 372, 373.

From the very beginning of the controversy over federal and state jurisdiction in *Southern Pacific Co.* v. *Jensen* (1917), 244 U. S. 205, 217, it was made clear that a maritime worker whose "employment was a maritime contract" and who received maritime-connected injuries was within the federal concern. See also *Atlantic Transport Co.* v. *Imbrovek* (1914), 234 U. S. 52, 62.

Respectfully submitted,

AMERICAN TRIAL LAWYERS ASSOCIATION,
By Paul S. Edelman,
Attorney for *Amicus Curiae.*

Dated at New York, New York, this day of December, 1967.

Certificate

This is to certify that on the 12 day of December, 1967, copies of the above application to appear as *Amicus Curiae* and brief in support thereof have been forwarded to Hon. Erwin N. Griswold, Solicitor General, United States Department of Justice, Washington, D. C. 20530, Attorneys for C. D. Calbeck, Deputy Commissioner; to the Honorable Messrs. Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas 77002, Attorneys for Respondents Crown Stevedoring Co. and Texas Employers Insurance Association; and to the Honorable Messrs. Mandell & Wright, 707 South Coast Building, Houston, Texas 77002, Attorneys for Petitioner, Andrew Nicholson.

PAUL S. EDELMAN.